

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 60072-0926
<p>Pursuant to 37 CFR 1.8(a)(1)(ii) I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office via the electronic filing system in accordance with 37 CFR §§1.6(1)(4) and 1.8(a)(1)(i)(C) on the date indicated below and before 9:00 PM PST.</p> <p>on _____</p> <p>Signature _____</p> <p>Typed or printed name _____</p>		Application Number 10/622,880 First Named Inventor Gavin Peacock Art Unit 2194 Examiner Richard Pantoliano, Jr.
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal. XXX</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided. XXX</p> <p>I am the <input type="checkbox"/> applicant/inventor. _____ /MarcelK Bingham#42327/ <input type="checkbox"/> assignee of record of the entire interest. _____ Signature See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>42,327</u> _____ (408) 414-1080 <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____ 11/12/2007 </p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>		

*Total of 1 _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Pre-Appeal Brief Request Attachment

The Examiner has made clear factual errors with respect to the current rejections for at least the following claims.

Claim 24

The cited art clearly fails to teach about a "unified exchange manager accepting message information" and "**selecting the appropriate application** based on a **data type** of the message information."

Claim 24 requires selecting an application to which to pass the message information, where the selection is based on the data type of the message information. This feature is not suggested much less disclosed by the cited art.

The Office Action rejects claim 24 based on Lazaridis. The Office Action cites sections in Lazaridis as disclosing the feature of selecting an application based on the date type of the message information. One section cited is col. 4, lines 58 - col. 5.

With respect to this section, the rejection may be based on, *inter alia*, correlations drawn between the message information claimed and the files that are received and subsequently processed by applications in the system of Lazaridis. Assuming the correlation is valid, Lazaridis nevertheless fails to disclose the above highlighted feature.

This section contains several passages regarding how received files are processed:

When the invention receives a file, it is stored temporarily in Pending Files (205) until it is completely received without error. The entire file is moved from Pending Files (205) to Inbound Files (204). Files in Inbound Files (204) are processed and deleted by the applications accessing such files. (col. 5, Col. 36 – 40)

The above passage describes that files are moved to another directory once the files are completely received, where the files are processed and deleted by applications. It does not follow from this description that applications are selected based on the data type of the received file.

In fact, nothing in this passage or the entire section suggests in any way much less discloses selecting an application to which to pass the accepted message information. While Lazaridis does teach how it selects a destination directory for a received file, Lazaridis fails to teach to select an application to pass a received file.

Specifically, in Lazaridis, when a file is received, the file is added to the directory derived from the sender's network address or to a directory named by the sender. For example:

When a file is received, the Receive File Manager saves it in a pending directory until the entire file is received without error. When the file is completely received, it is moved to a subdirectory name derived from the remote computer's network address or to a given directory specified by the sender and the file name, including its path, is appended to an inbound list file. (col. 5, lines 36 – 40)

Other passages in other sections of Lazaridis also teach that a received file is placed into a directory derived from the sender's network address or to a directory named by the sender. (See for example, col. 17, lines 15 – 22). It does not follow from the fact that a destination for a directory is determined from a sender's network address or sender's naming of the directory that an application is being selected to pass an accepted information message.

Another section cited as teaching selecting the appropriate application based on a data type is col. 6, lines 30 – 60. This section describes a Message Manager process that processes incoming messages. With respect to this section, the Examiner states: “The Message Manager process ... receives messages and examines the type of the messages. If it is a system message, the File Transfer Agent processes the message itself. If that message is a communication message, it forwards that message to the appropriate application, thereby meeting the claim limitation.” (See Advisory Action)

The Examiner has failed to make clear what is being correlated with an application that is being selected, despite being requested for further clarifications by the Applicant. However, even if is true that the Message Manager is selecting an application to send a message, which it is not, this passage fails to teach selecting the application based on a data type of the message.

While the message manager may select how to handle a message based on whether a message is a system message type or a communication message type, the word type is clearly not being used in the same sense as used in the term data type. Data type has a well understood meaning among those skilled in the art, and it refers to a particular format for data. One skilled in the art would not equate system message type or a communication type to a data type or format of data. The cited art uses the word “type” to

mean a categorization that has nothing to with data typing or format. Therefore, the cited art is not teaching selecting a message based on data type.

2. The cited art clearly fails to teach “determining whether a user accepts said message information”

The Examiner cites col. 6, lines 4 – 65 as teaching this limitation. Applicant has thoroughly examined this passage and has not found anything that could possibly be correlated to this limitation.

Claim 29

Claim 29 recites “returning from said appropriate application program a call handle that activates said application program and displays said message information.” This feature is not disclosed or suggested in any way by the cited art.

In fact, the Examiner admits this limitation is not expressly disclosed, but instead relies on inherent disclosure. The Examiner states “Since the application making use of the File Transfer Agent is disclosed as being a separate entity from the application wishing to transfer messages, the File Transfer Agent would inherently require some sort of callback mechanism to inform the calling the application of the completion of sending or receiving a message sent to or from that application.”

MPEP 2112(IV) states: “In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.”

Lazaridis, as the Examiner admits, does not disclose a callback mechanism to inform the application of completion of sending or receiving a file. In fact, it does not teach any mechanism for notifying an application of when receiving or sending of a file is completed.

Nor does it necessarily flow from Lazaridis that an application is notified of completing the receiving or sending of a file, much less that the application is notified via a call back mechanism. For example, Applications could simply poll certain directories for files that are received, where the files are then “processed and deleted by the applications....” (col. 5, lines 35 – 39)

In fact, Lazaridis teaches to limit interaction between applications and mechanisms for transmitting and receiving files to normal file system calls. “Therefore, to use the invention an application developer utilizes normal file system calls to interact with any communication network, including wireless networks.” (col. 1, lines 43 – 45)